

Response to European Commission consultation on the review of ELTIF rules

Question 1. Please specify to what extent you agree with the statements below? From fully agree to fully disagree

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion Not applicable
The ELTIF framework has been successful in achieving its objective of raising and channelling capital towards European long-term investments in the real economy	X					
The scope of the ELTIF authorisation is appropriate	X					
The costs of launching and operating an ELTIF, and the regulatory and administrative burdens are appropriate			X			
The ELTIF regime is relevant to the needs and challenges in EU asset management				X		
The existing ELTIF regime is consistent with the CMU objectives					X	
The ELTIF regime has brought added value to investors in and the	X					

financing of long-term projects						
The ELTIF investor protection framework is appropriate						X

Please explain your position on your responses to question 1, providing key arguments to support your answers:

Launched in 2015, the ELTIF regime was established to provide an additional source of long-term finance to boost the availability of long-term finance, that would ultimately contribute to the financing of the EU’s real economy, supporting social and infrastructure projects, as well as listed and unlisted small and medium-sized enterprises (“SMEs”). Since 2015, the market for ELTIFs has failed to develop with less than 25 ELTIFs launched and less than €5bn invested.

The ELTIF is a unique EU fund product regime in seeking to bridge the gap between AIFMD and UCITS and provide access to less liquid investments for both retail and professional investors. In doing so a higher level of regulatory requirements and investment restrictions apply. However, the calibration of this particular regime has led to a limited uptake and certain of the regulatory requirements, in particular the rules on eligible assets need to be reviewed to facilitate greater uptake.

There are also uncertainties and inconsistencies relating to the authorisation process, with the possibility that Member States can impose additional, overlapping or conflicting requirements. We recommend that the Commission conduct a review of how the ELTIF regime has been implemented in the Member States and how the authorisation is applied. Furthermore, we do not think that Member States should impose other product rules or authorisation requirements in respect of ELTIF if the regime is to function effectively across the Internal Market. Uncertainties over the authorisation and distribution process for ELTIFs across the EU increase the time to market of a potential ELTIF and serve to dissuade fund promoters from using them. Further harmonisation could be undertaken in relation to the authorisation and distribution process.

For this regime to succeed, there needs to be a focus on creating demand and supply side incentives in order to scale up for such investments, as the current pool of investment opportunities is not sufficient, which limits the ability of ELTIFs to launch and function within the regulatory requirements. Without scaling up incentives, it is difficult to envisage how this product would operate at critical mass and properly contribute to the rebuilding of the real economy post COVID and post-Brexit.

Utilisation of ELTIFs by sovereign wealth investors or the ECB to deploy capital to the real economy would serve to kick-start this regime as well as giving a certain level of confidence to investors.

Thought may also be given to the creation of fiscal incentives within Member States to increase demand and encourage investors into ELTIFs. This could include increasing the investment thresholds applicable for pension funds and insurance undertakings investing in ELTIFs.

Further consideration could also be given to ensuring the tax neutrality of ELTIFs in order to prevent double taxation, as well as incentivising investment in ELTIFs via the taxation system (see our response to Question 6).

Question 2. Please indicate the areas and provisions in the ELTIF regime where policy action would be most needed to improve the functioning of the ELTIF regulatory framework? Please rate as follows from policy action very strongly needed to no policy action needed

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)	Don't know - No opinion Not applicable
General principles and definitions used in the ELTIF Regulation				X		
Market capitalisation threshold defining an SME equity or debt issuer					X	
Authorisation requirements					X	
Operational conditions						X
Passportability of ELTIFs		X				
Rules pertaining to eligible investments					X	
Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets					X	
Rules pertaining to the prohibition to undertake certain activities						X
Rules concerning the qualifying portfolio undertakings					X	
Conflict of interests related rules, including the ban on co-investment						X
Portfolio composition and diversification rules and their application					X	

Concentration limits					X	
Rules and limitations related to the borrowing of cash					X	
Redemption related rules and life-cycle of ELTIFs					X	
Rules concerning the disposal of ELTIF assets						X
Transparency requirements				X		
Prospectus related provisions				X		
Cost disclosure related rules						X
Rules pertaining to the facilities available to investors for making subscriptions				X		
Requirements concerning the marketing and distribution of ELTIFs to investors				X		
Specific provisions concerning the depository of an ELTIF marketed to retail investors						X
Provisions and rules pertaining to the marketing of ELTIFs to retail investors				X		
Provisions integrating the EU Taxonomy for sustainable activities into the ELTIF framework						X
Inconsistent or duplicative application of the ELTIF related requirements by Member States					X	
Issues arising from the supervisory practices within Member States						X

Cross-border marketing related challenges					X	
Excessive reliance on distribution networks to market ELTIFs						X
Excessive costs of setting up and operating ELTIFs						X
Competition from existing national fund structures						X
Taxation related issues				X		
Other aspects						X

Please explain your position on your answer to question 2, providing your arguments, and where appropriate, concrete examples and data to support your answers.

Authorisation requirements

Article 3, para 2 of the ELTIF Regulation states that “Only EU AIFs shall be eligible to apply for and to be granted authorisation as an ELTIF”. We note that there a number of inconsistencies when comparing the ELTIF to other AIFs can arise, including, but not limited to the following areas:

- Eligible Assets
- Investment Restrictions
- Borrowing
- Marketing
- Redemptions

In order to avoid confusion and/or domestic gold plating, we believe that where a vehicle is designated as an ELTIF and where differences arise, ELTIF rules and requirements should take precedence. We think that the Commission should review authorisation requirements applicable in the individual Member States and consider, based on that feedback, what further changes should be made to the authorisation requirements to facilitate the operation of ELTIFs across the Internal Market.

Rules pertaining to eligible investments

The categories of eligible assets as defined within the Regulation are overly restrictive, limiting the investable universe, hedging possibilities and assets that an ELTIF may invest in, the combination of which limits the attractiveness of the ELTIF as a product.

Clarification and/or practical guidance on the eligibility requirements, notably in relation to investments in real assets/concentration limits

Investments that might generate long term benefits associated with infrastructure projects, such as social housing, healthcare, broadband and alternative energy involve real assets, with long term income streams associated with these. Given the size and magnitude of such projects and the limited number of ELTIFs currently being marketed, consideration should be given to amending or removing such limits as well as giving specific guidance or case studies

on the types of real assets/infrastructure projects that the legislators envisaged when under this Regulation.

A key purpose in establishing the ELTIF regime was to establish an additional source of “scarce capital” to provide long-term finance to the ‘real economy’. It is expected that sponsors of ELTIFs will therefore participate in loan origination activities. Such activities should be provided for within the confines of the overall ELTIF regime and not subject to additional domestic requirements that would ultimately defeat the objective of creating an additional source of ‘scarce capital’.

Rules concerning the qualifying portfolio undertakings

Consideration should be given to increasing the market capitalisation threshold of 500,000,000 EUR for portfolio undertakings, which is significantly lower than the MSCI Europe Small Cap index average capitalisation. This would increase the investable universe for ELTIFs.

Rules and limitations related to the borrowing of cash

The borrowing limitations imposed on ELTIFs are more onerous than those imposed on competing AIF vehicles, which if amended might improve supply side activity.

Redemption related rules and life-cycle of ELTIFs

The objective of the ELTIF regime is to match long term investment activities with long term capital. Consideration might therefore be given to offering perpetual (“evergreen”), exchange traded, fund structures, similar to the Business Development Company (BDC) regime that exists in the US. This might prove a more attractive proposition for retail investors who achieve liquidity through normal market mechanisms.

Transparency requirements

For the ELTIF Regulation to be successful, the rules should be clear and defined in order to give promoters the confidence to develop such products and competent authorities the confidence to authorise these. Article 23, para 3 sets out a number of requirements that an ELTIF’s prospectus may contain. The final bullet (f) reads as follows “... and any other information considered by the competent authorities to be relevant for the purposes of paragraph 2”. This creates uncertainty for promoters looking to launch or offer such a product and indeed the competent authority looking to approve such a product and allows for gold plating and differences across the EU.

Cross-border marketing related challenges

Satisfying multiple cross-jurisdictional marketing registration and notification procedures is inconsistent with the current passportability of an AIF in the EU and substantially increases time to market, costs for investors and burden on fund sponsors. We believe an ELTIF managed by an EU AIFM should be able to avail of the passporting and marketing framework currently in place under the AIFMD or an equivalent passporting and marketing framework (in operational terms) be adopted.

Conflict of interest

Article 12 of the ELTIF regulation should be amended. It is normally market practice to ask managers to have “skin in the game” as it aligns the interest of the manager with that of the investors.

Question 3. Please rate the following characteristics of the ELTIF framework based on how positive or negative their impact is from significant negative impact to significant positive impact

	-2 Significant negative impact	-1 Negative impact	0 No impact	1 Positive impact	2 Significant positive impact	Don't know - No opinion Not applicable
Broad scope of eligible assets under the ELTIF regime	X					
Long-term and illiquid nature of the investments of an ELTIF					X	
Operational conditions						X
Transparency requirements						X
Availability of ELTIFs to retail investors		X				
Requirements and safeguards for marketing of ELTIFs to retail investors		X				
Validity of an authorisation as an ELTIF for all Member States					X	
Other aspects						X

We note the objective of attracting retail investment into ELTIF, however, the limits, suitability requirements and distribution mechanisms will make it difficult for ordinary investors to participate. Consideration might be given instead to creating exchange traded evergreen structures, whereby retail investors could gain exposure and liquidity to ELTIFs using normal exchange trading mechanisms.

Question 4. Which provisions and requirements pertaining to the eligibility of investments and investment assets set out in the ELTIF Regulation need to be updated to improve the functioning of the ELTIF framework? Please rate as follows:

	1 (no policy action needed)	2 (policy action could be considered)	3 (policy action desirable)	4 (policy action needed)	5 (policy action very strongly needed)	Don't know - No opinion Not applicable
A minimum size eligibility requirement for real assets investments					X	
A condition for an exposure to real estate through a direct holding or indirect holding through qualifying portfolio undertakings of individual real assets					X	
Limitation on eligible investment assets to ELTIFs, EuVECAs and EuSEFs					X	
Inability to invest in a "financial undertaking"					X	
EUR 500 000 000 threshold for investing in listed issuers					X	
Other conditions and requirements related to eligible investment assets and qualifying portfolio undertaking					X	

Question 4.1. Please explain your position on your answer to question 4:

The minimum size eligibility requirements should be removed or reconsidered as it takes away from the pure investment process, creating a focus on size versus quality. This also creates challenges in a market that is still evolving and needs to build further scale.

The limitation on an ELTIF to invest in other funds inadvertently limits the ability of the asset manager to potentially add an additional diversification element to their portfolio composition.

The inability to invest in a financial undertaking such as a derivative which might be used to effectively hedge portfolio exposure inadvertently increases investment risk and curtails the professional asset manager from using their experience and risk management systems and processes to hedge portfolio risk for the protection of investors.

Question 5. Should any of the following provisions of the ELTIF legal framework be amended, and if so how, to improve the participation and access of retail investors to ELTIFs?

a) Minimum entry ticket for retail investors and net worth requirements

Yes/No/**Don't know / no opinion / not relevant**

b) Suitability test

Yes/No/**Don't know / no opinion / not relevant**

c) Withdrawal period of two weeks

Yes/No/**Don't know / no opinion / not relevant**

d) Possibility to allow more frequent redemptions for retail investors

Yes/No/**Don't know / no opinion / not relevant**

e) Procedures and arrangements to deal with retail investors complaints

Yes/No/**Don't know / no opinion / not relevant**

f) Provisions related to the marketing of ELTIFs

Yes/No/**Don't know / no opinion / not relevant**

g) Other provisions and requirements related to retail investors

Yes/No/**Don't know / no opinion / not relevant**

Question 6. You are kindly invited to make additional comments on this consultation if you consider that some areas have not been adequately covered above.

Please elaborate, more specifically, which amendments of the ELTIF framework could be beneficial in providing additional clarity and practical guidance in facilitating the pursuit of the ELTIF strategy?

Please include examples and evidence on any issues, including those not explicitly covered by the questions raised in this public consultation:

Further consideration could also be given to ensuring the tax neutrality of ELTIFs in order to prevent double taxation, as well as incentivising investment in ELTIFs via the taxation system.

It is common for regulated, widely held collective investment schemes to be afforded tax neutrality vis a vis income and capital gains taxes, typically either through exemption from tax (in the case of corporate funds) or by being classified as a transparent vehicle for tax purposes (thereby eliminating taxation at the fund entity level). In order to ensure that ELTIFs and their investors are not disadvantaged when compared against other fund vehicles from a tax point of view, the designation of a vehicle as an ELTIF should either automatically afford tax-exempt / tax-transparent status or else require that the ELTIF can be formed as a fund entity which, under existing laws, is tax-exempt / tax-transparent.

In terms of incentivising investment in ELTIFs, consideration could also be given to measures such as:

- Member States granting an exemption from withholding on interest and dividends paid to an ELTIF by companies and other entities in which an ELTIF invests (potentially by expanding the scope of the Parent-Subsidiary Directive and the Interest & Royalties Directive).
- Providing for favourable tax treatment for companies in which ELTIFs hold a substantial investment, such as:
 - Enhanced / accelerated tax depreciation allowances for qualifying capital expenditure
 - Exemption from or amelioration of thin capitalisation rules
 - Tax holidays in early years of activity
 - Rebates of taxes paid on profits distributed to ELTIF investors

Investors could also be afforded exemptions from or reductions of income tax, social security, and capital gains tax on the returns from / gains on sale of their units in ELTIFs.

By their nature, ESG type products may be less liquid and longer term than traditional investments. Consideration should be given to developing the ELTIF for these purposes by allowing favourable tax treatment for qualifying “sustainable investments” held by an ELTIF. Examples of such incentives might include:

- Reduced rates of tax on distributions and other returns from an ELTIF holding qualifying investments
- Reduced capital gains tax rates for longer term holdings of an ELTIF holding qualifying investments
- Reduced rates of/exemptions for withholding tax at investment level to reduce “tax drag” from investing in qualifying investments
- Exemptions from financial transaction taxes, stamp duties, or other subscription taxes

Such tax incentives could apply on a proportionate basis whereby tax relief would apply in respect of the percentage of overall net assets invested which is invested into qualifying sustainable products.